PATENT

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Appellant(s):	Oksanen et al.	Art Unit:	2173
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Title:	SPEED BROWSING OF MEDIA ITEMS IN A MEDIA DIARY APPLICATION		

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REPLY BRIEF UNDER 37 CFR § 41.41

This Reply Brief is filed in response to the Examiner's Answer mailed November 30, 2009, the Examiner's Answer being in response to Applicant's Second Supplemental Amended Appeal Brief filed November 17, 2009. This Reply Brief addresses various points raised by the Examiner's Answer.

7. *Argument.*

As explained in section 7 of the Second Supplemental Amended Appeal Brief at pages 9-19, Claims 1, 3-5, 7-25, 27, and 29-47 are patentably distinct from the cited references individually and any proper combination of the cited references. Accordingly, Appellants respectfully request that the aformentioned rejections be reversed.

In reply to the Examiner's Answer, Appellant again submits that any proper combination of the cited references fails to teach or suggest the recited features of the claimed invention. The Examiner's Answer is, in large part, simply a repeat of the same recitations used in the final Office Action in rejecting the currently pending claims and again repeated in the Advisory Action. As such, Appellant respectfully submits that since the Second Supplemental Amended

Appeal Brief pointed out the flaws in the Examiner's reasoning with respect to these rejections, no further discussion of the issues previously addressed need be presented herein. Rather, Appellant directs the comments presented herein toward responding to and rebutting the assertions from the "Response to Argument" section 10 of the Examiner's Answer (pages 18-25).

10. *Response to Argument.*

The Examiner's Answer in section 10 has provided responses to Appellant's arguments of section 7 of the Second Supplemental Amended Appeal Brief.

A. The Combination of the Rothmuller publication, Lyness patent, and Becker patent Does Not Teach or Suggest *a Scrolling Time Bar*

The Examiner's Answer continues to assert an alternate second interpretation for "a scrolling time bar." To do so, the claim term is taken out of context, and this alternate second interpretation is inconsistent with the express language of the claims.

First, the Examiner's Answer states that "nothing within the claims further limit the way in which a time bar functions in order for it to be considered a 'scrolling' time bar." Page 18. This is incorrect. The claims recite a required context for the scrolling time bar. For example, Claim 1 recites "a timeline view comprising a scrolling time bar and a media handle" and further "a centerline position of the scrolling time bar for the media handle." The rejections of the final Office Action and the remarks of the Advisory Action and Examiner's Answer all fail to consider a scrolling time bar in the context of all three of a timeline view, a scrolling time bar, and a media handle as recited by the claims.

Second, the alternate second interpretation in the Examiner's Answer for a scrolling time bar is inconsistent with the express language of the claims. The Examiner's Answer states that "A second interpretation is that the timeline allows a user to scroll to a specific period of time, which will be indicated in some way to the user." Page 18. The claims do not recite a time bar configured to allow a user to scroll. Instead, the claims include the adjective "scrolling" as a modifier of the term "time bar." The specification states that "the time bar will scroll." Page 18,

line 19 (paragraph 0061). That is, the time bar is a "scrolling time bar." Applicant respectfully submits that any interpretation of a scrolling time bar that does not require the time bar to scroll is not a reasonable interpretation of the term scrolling time bar for purposes of the present invention and pending claims. Applicant again submits that the broadest *reasonable* interpretation of the term "scrolling time bar," *consistent with the specification*, requires that the time bar scroll, contrary to the rejection of the Final Office Action and the express assertions of the Advisory Action and Examiner's Answer. *See, e.g., In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004); *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (*en banc*). Applicant notes that the extent or specific nature of how the time bar scrolls is not recited in the claims and that prior remarks related to exemplary embodiments of the present invention were made solely for a clearer understanding of the claimed invention and not in reliance to distinguish the prior art. The prior art does not teach "a *scrolling* time bar." And Applicant specifically rebuts as inaccurate the statement in the Examiner's Answer of "Thus *[Rothmuller, figure 3]*, may be considered scrolling since the user may adjust their current position using the bar within the timeline." Page 19. Timeline 250 does not scroll. Providing functionality to adjust a current position is not equivalent to and does not teach or suggest that the timeline itself scrolls. Moreover, the explanation "using the bar within the timeline" appears to refer to the icon in the left and right arrow bar below timeline 250, but this icon and its function is not described anywhere in the Rothmuller publication.

Third, the Advisory Action and Examiner's Answer both also assert that "One may also interpret the adjustable bands 251 within the timeline to read on a scrolling time bar." *E.g.*, Examiner's Answer, page 19. In the Examiner's Answer, the additional statement is added that "Thus, the outer bounds of the timeline may be scrolled to increase or decrease the time period of displayed photos." Page 19. This statement is incorrect and inappropriately characterizes the disclosure of the prior art. The Rothmuller publication states only that "The timeline includes adjustable time bands 251 that can be moved to allow timeline 250 to specify the time period that is used to find matching photos" (para. 0028) and that "the adjustable time bands 251 can be moved to find all photos in the database that are tagged with a date or timestamp that falls within the range indicated by the adjustable time bands 251" (para 0029). The Rothmuller publication

does not disclose that adjustable time bands 251 "may be scrolled to increase or decrease the time period of displayed photos." This statement is not based in fact and inappropriately characterizes the disclosure of the prior art. The Rothmuller publication does not disclose that either the adjustable time bands 251 or the timeline 250 may be scrolled. As such, Applicant again submits that it is not reasonable to characterize the fixed timeline 250 with moveable adjustable time bands 251 as a scrolling time bar.

Fourth, the Examiner's Answer also states that "the combination of Rothmuller and Lyness would provide a scrolling time bar such that the timeline moves to indicate a currently selected period of time." Page 19. Applicant notes that the statement adds the phrase "such that the timeline moves" to a similar statement in the Advisory Action. Applicant rebuts this assertion. Nothing in either the Rothmuller publication or the Lyness patent, or the combination thereof, teaches or suggests a modification of the Rothmuller publication where the timeline moves. The Lyness patent discloses a return-to-center controller, but does not provide any teaching or suggestion that the use of such a controller in the Rothmuller publication would result in a change of the function of the timeline such that the timeline moves. This assertion is not based in fact or reason. The Lyness patent may replace or modify a control feature of the Rothmuller publication, but the combination still does not provide a scrolling time bar.

B. The Combination of the Rothmuller publication, Lyness patent, and Becker patent Does Not Teach or Suggest (i) *a Centerline Position* of a Scrolling Time Bar of a Timeline View or (ii) a Relative Deviated Position of a Media Handle from a Centerline Position of a Scrolling Time Bar

The Examiner's Answer asserts that "Since the control tool is centered on the information is navigating *[Lyness, figure 16]*, using the control tool on the timeline of *[Rothmuller, figure 3]* would provide a control that is centered on the timeline that would allow for scrolling of the timeline." Page 22. Even if correct, this argument does not address the recited claim limitations of "the relative deviated position of the media handle from a centerline position of the scrolling time bar [of a timeline view] for the media handle." The claims do not recite that the control tool is centered on the timeline. Instead, the claims recite that "manually-controlled speed of the browsing [is] determined by the relative deviated position of the media handle from a centerline position of the scrolling time bar [of a timeline view] for the media handle."

C. The Combination of the Rothmuller publication, Lyness patent, and Becker patent Does Not Teach or Suggest Decreasing the Speed of Browsing in Relation to the Distance of an Approaching Media File in Claim 7

As recited in Claim 7, the speed of the browsing is decreased "in relation to the distance of the approaching media file and extent of deviation of the media handle from the centerline position." The Examiner's Answer reasserts that the Becker patent discloses dynamically varying the scroll speed "in response to the content of the viewed portion of the viewable object." Page 23. Nothing in the Becker patent teaches or suggests relying upon a *distance* to control scroll speed. Instead, the Becker patent discloses relying on "the *content* of the viewed portion of the viewable object." Col. 2, line 61-62 (emphasis added). Content and distance are unrelated concepts. Moreover, the viewed portion of the viewable object does not teach or suggest relying upon a distance of an approaching media file. Instead, the Becker patently teaches analyzing what portion of a viewable object is currently viewed and determining whether to dynamically vary the scroll speed. This is not the limitation recited by Claim 7. Claim 7 relies upon an approaching media file, not a viewed portion of a viewable object. Claim 7 also relies upon the distance of the approaching media file, not the content of a viewed portion of a viewable object.

D. The Combination of the Rothmuller publication, Lyness patent, and Becker patent Does Not Teach or Suggest Increasing the Speed of Browsing When a Media File Having the Chosen Browse Parameter Bypasses the Centerline Position of the Media View for Claims 8, 32, and 37

The Examiner's Amendment reasserts a teaching or suggestion from the Becker patent, or the combination of the Rothmuller publication, Lyness patent, and Becker patent, that is not present in the prior art and implies a limitation in the claims that is not present.

First, the remarks of the Advisory Action and the Examiner's Answer attempt to identify a lack of particularity in the claim language. The remarks state that "nowhere in the claim defines what part of the media file that bypasses the centerline position of a view causing the increase in speed of browsing." *E.g.*, Examiner's Answer, page 24. Applicant respectfully submits that such an inquiry is implicitly unnecessary. The claims expressly recite that "a media file... bypasses the centerline position of a view." The claim language is clear an unambiguous. The media file bypasses the centerline position. The claim does not suggest or require interpretation of some specific part of a media file, nor does the claim language provide for any less than the entire media file bypassing the centerline position.

Second, the remarks of the Advisory Action and the Examiner's Answer attempt to identify some equivalent inherent function in the prior art. For example, the Examiner's Answer at pages 24-25 states:

> "Thus, there must be a point in which scrolling speed is at its slowest. This point marks the spot where content being displayed is of most interest to the user *[Becker, column 6, lines 40-58]*. As such, the content of most interest would be centered on the display. Any movement away from the point of most interest would cause movement away from the center position and increased scrolling speed. Thus, at that point, scrolling speed would be based around this centerline position of the view."

Applicant again refutes this assertion as either, or both, (i) speculation or conjecture based upon impermissible hindsight without any support in the prior art, or (ii) an incorrect interpretation of the disclosure of the Becker patent. The prior art, particularly the cited Becker patent, does not expressly or implicitly teach or suggest this disclosure or the limitation at issue. And no basis in fact and/or technical reasoning is provided "to reasonably support the determination that the

allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (BPAI 1990). The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic, rather than what was necessarily present in the prior art. *In re Rijckaert*, 9 F.3d 1531, 1534 (Fed. Cir. 1993); *In re Oelrich*, 666 F.2d 578, 581-82 (CCPA 1981). "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities.' " *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999). First, the remarks attempt to define a point that is not recognized in the Becker patent. Next, the remarks state that this point marks the spot where "the content of most interest would be centered on the display." However, the Becker patent makes no correlation between the location at which the scrolling speed is slowest and the center of the display. This assertion is an unsupported fact stated in the Advisory Action and the Examiner's Answer. The disclosure of the Becker patent contemplates only whether or not a graphical representation is visible and whether or not it is more or less intricate than other graphical representations. Nothing in the Becker patent discloses that the most intricate part of a graphical representation would correspond to a centerline position of a view. The combination of the Rothmuller publication, the Lyness patent, and the Becker patent fails to teach or suggest the concept of an object bypassing a centerline position of a view and also fails to teach or suggest increasing the speed of browsing in relation to an object bypassing the centerline of a media view.

For at least each of the reasons stated above, Applicant respectfully submits that, on the basis of the current rejections, all of the § 103(a) rejections should be reversed and that all of Claims 1, 3-5, 7-25, 27, and 29-47 are patentable and in condition for allowance. Reconsideration is respectfully requested.

CONCLUSION

For the above reasons, it is submitted that the rejections of the pending Claims 1, 3-5, 7-25, 27, and 29-47 are erroneous and reversal of the rejections is respectfully requested.

Respectfully submitted,

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